

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MAY 21, 2019

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

Ex Parte: In re: Money Order Sellers
and Money Transmitters

SCC-CLERK'S OFFICE
DOCUMENT CONTROL CENTER

2019 MAY 21 P 4: 14

CASE NO. BFI-2019-00016

190550096

ORDER TO TAKE NOTICE

Section 6.2-1913 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 19 (§ 6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia ("Chapter 19"). The Commission's regulations governing money order sellers and money transmitters who are licensed under Chapter 19 ("licensees") are set forth in Chapter 120 of Title 10 of the Virginia Administrative Code ("Chapter 120").

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 120. The primary impetus for the proposed amendments is Chapter 634 of the 2019 Virginia Acts of Assembly, which will become effective on July 1, 2019, and require all licensees to register with the Nationwide Multistate Licensing System and Registry ("NMLS"). The proposed regulations set forth the requirements for current licensees to transition to NMLS and for other persons seeking licensure under Chapter 19 to submit their applications through NMLS. In addition, the proposal requires licensees to maintain current information in their NMLS records and clarifies that all licenses must be renewed annually between November 1 and December 31. The proposed regulations also: (i) replace the existing reporting requirements in subsections A and B of 10 VAC 5-120-40 with a requirement that licensees file quarterly call reports through NMLS along with information concerning their

financial condition; (ii) prescribe the time period within which licensees must file the audited financial statements required by § 6.2-1905 D of the Code of Virginia; (iii) require the authorized delegate information specified in § 6.2-1917 B of the Code of Virginia to be submitted through the agent reporting functionality in NMLS; (iv) specify that the annual assessment will be calculated using the information reported by licensees in their quarterly call reports or other written reports that may be required by the Commissioner of Financial Institutions; and (v) provide that if the Bureau requests information from an applicant to complete a deficient application and such information is not received within 60 days of the Bureau's request, the application will be deemed abandoned unless an extension of time is requested and approved prior to the expiration of the 60-day period. Various technical and conforming amendments have also been proposed.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of July 1, 2019.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulations are appended hereto and made a part of the record herein.
- (2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before June 21, 2019. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2019-00016. Interested persons desiring to submit comments or request a hearing electronically may do so by

following the instructions available at the Commission's website:

<http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached proposed regulations, to the Virginia Registrar of Regulations for publication in the *Virginia Register of Regulations*.

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the proposed regulations, to all licensed money order sellers and money transmitters, and such other interested parties as he may designate.

STATE CORPORATION COMMISSION**Money Order Sellers and Money Transmitters****10VAC5-120-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Authorized delegate," "licensee," "monetary value," "money order," and "outstanding" shall have the meanings ascribed to them in § 6.2-1900 of the Code of Virginia.

"Bureau," "commission," and "commissioner" shall have the meanings ascribed to them in § 6.2-100 of the Code of Virginia.

"Chapter 19" means Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

"Generally accepted accounting principles" for purposes of Chapter 19 and this chapter means standard accounting guidelines as established and administered by the American Institute of Certified Public Accountants (AICPA) and the United States Financial Accounting Standards Board (FASB).

"Merchant or service provider" means a person engaged in the business of selling goods or services, but excluding a person licensed or required to be licensed under Chapter 19.

"Money transmission" for purposes of Chapter 19 and this chapter shall have the meaning ascribed to it in § 6.2-1900 of the Code of Virginia. However, the term shall not include the actions of an agent who collects funds on behalf of a merchant or service provider, provided that (i) the agent has been explicitly designated in a written agreement as an agent of the merchant or service provider; (ii) any funds collected by the agent shall be deemed for all purposes to be received by

the merchant or service provider, regardless of whether the agent actually remits such funds to the merchant or service provider; (iii) the agent provides the Virginia resident with a dated receipt indicating that payment to the agent constitutes payment to the merchant or service provider; and (iv) there is no risk of loss to the Virginia resident if the agent fails to remit such resident's funds to the merchant or service provider. This definition shall not be construed to prohibit the merchant or service provider from seeking indemnification from its agent for any direct losses incurred due to the agent's failure to remit funds in accordance with its agreement.

~~"Reporting period" means a calendar quarter, the first six months of a calendar year, or the last six months of a calendar year, as the case may be.~~

"Nationwide Multistate Licensing System and Registry" and "Registry" shall have the meanings ascribed to them in § 6.2-1900.

"Senior officer" for purposes of Chapter 19 means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.

10VAC5-120-20. Surety bond standards.

A. Every licensee shall be bonded in a principal amount determined by the Commissioner of Financial Institutions. The bond amount shall be equal to the licensee's Virginia average monthly money order sales during the preceding two ~~reporting periods~~ calendar quarters, or its Virginia average monthly money transmission volume during such periods, or both, as applicable, rounded to the next highest multiple of \$10,000, but not exceeding \$500,000. The commissioner, however, may increase the amount of bond required to a maximum of \$1 million upon the basis of the impaired financial condition of a licensee, as evidenced by net worth reduction, financial losses, or other relevant criteria.

B. The amount of bond required of a new licensee shall be based upon the applicant's financial condition, capitalization, projected Virginia monthly money order sales and money transmission volume, experience, and other factors deemed pertinent.

C. The minimum bond required shall be \$25,000.

D. The form of the bond will be prescribed and provided by the commissioner. The required bond shall be submitted prior to the issuance of a license, and shall be maintained continuously thereafter as long as the licensee or former licensee has money orders outstanding or unfulfilled money transmission agreements.

10VAC5-120-35. Nationwide multistate licensing system and registry.

A. Applications for a license under Chapter 19 shall be made through the Registry in accordance with instructions provided by the commissioner. The commissioner may provide these instructions through the Registry, on the commission's Internet website, or by any other means the commissioner deems appropriate.

B. All licensees holding a license under Chapter 19 prior to July 1, 2019, shall register with the Registry and file through the Registry a transition request for its license under Chapter 19 no later than September 1, 2019.

C. Every licensee shall maintain current information in its records with the Registry. Except as otherwise required by Chapter 19 or this chapter, a licensee shall update its information as soon as is practicable, but in no event later than 10 business days from when a change takes effect.

D. A license issued under Chapter 19 shall expire on December 31 of each calendar year unless it is renewed by a licensee on or after November 1 of the same year. However, licenses that are granted between November 1 and December 31 shall not expire until the end of the following calendar year. A license shall be renewed upon the commissioner finding that the licensee has satisfied the requirements set forth in § 6.2-1905 F of the Code of Virginia.

10VAC5-120-40. Reporting and filing requirements.

A. ~~1. Licensees licensed for less than three years shall file reports with the commissioner within 45 days after the end of each calendar quarter.~~

~~2. Licensees licensed for three years or longer shall file reports with the commissioner within 45 days after the end of each semiannual reporting period.~~

~~3. Licensees affiliated by common ownership with another licensee licensed for three years or longer, and licensees that acquire all or part of the money order sales business or money transmission business of another licensee licensed for three years or longer, shall file reports with the commissioner within 45 days after the end of each semiannual reporting period.~~ Pursuant to § 6.2-1905 D of the Code of Virginia, every licensee shall file quarterly call reports through the Registry as well as such other information pertaining to the licensee's financial condition as may be required by the Registry. Reports shall be in such form, contain such information, and be submitted with such frequency and by such dates as the Registry may require. Compliance with this subsection shall satisfy the requirement in § 6.2-1917 B of the Code of Virginia that a licensee file its quarterly financial statements with the commissioner.

B. ~~Licensees shall file a report of outstandings and permissible investments with the commissioner within 45 days after the end of each calendar quarter.~~

G. Within one business day after a licensee becomes aware of the occurrence of any of the following events, the licensee shall file a written report with the commissioner describing the event:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.

2. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.
3. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's money order seller license, money transmitter license, or other license for a similar business; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its money order sales, money transmission, or similar business; or (iii) takes any other action against the licensee relating to its money order sales, money transmission, or similar business where the total amount of restitution or other payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.
4. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed money order sales, money transmission, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.
5. The licensee surrenders its money order seller license, money transmitter license, or other license for a similar business in another state in lieu of threatened or pending license revocation; license suspension; or other administrative, regulatory, or enforcement action.
6. The licensee is denied a money order seller license, money transmitter license, or other license for a similar business in another state.
7. The licensee or any of its members, partners, directors, officers, principals, employees, or authorized delegates is indicted or convicted of a felony.

D. C. The reports required by this section shall contain such information as the commissioner may require. The commissioner may require such additional reports as he deems necessary.

D. Every licensee shall file the audited financial statements required by § 6.2-1905 D of the Code of Virginia within 105 days of the end of its fiscal year. For example, if a licensee's fiscal year ends on March 31, its audited financial statements must be filed by July 14 of the same year. If a licensee is unable to file its audited financial statements within 105 days of the end of its fiscal year, the licensee may request an extension, which may be granted by the commissioner for good cause shown. A licensee's audited financial statements shall cover the prior 12-month fiscal period and be prepared in accordance with generally accepted accounting principles.

E. The authorized delegate information required by § 6.2-1917 B of the Code of Virginia shall be submitted to the commissioner through the Registry's agent reporting functionality.

F. Any reports, notifications, or filings required by Chapter 19 or this chapter may be submitted to the commissioner through the Registry, provided that the Registry is capable of receiving such reports, notifications, or filings.

10VAC5-120-50. Assessment schedule for the examination and supervision of money order sellers and money transmitters.

Pursuant to subsection B of § 6.2-1905 of the Code of Virginia, the commission sets the following schedule for the annual assessment to be paid by persons licensed under Chapter 19. The assessment defrays the costs of the examination and supervision of licensees by the bureau.

The annual assessment shall be \$0.000047 per dollar of money orders sold and money transmitted by a licensee pursuant to Chapter 19. The assessment shall be based on the dollar volume of business conducted by a licensee, either directly or through its authorized delegates, during the calendar year preceding the year of the assessment as reported by each licensee in (i) the quarterly call reports filed through the Registry, or (ii) such other written reports as the

commissioner may require pursuant to § 6.2-1905 D of the Code of Virginia. If a licensee fails to fully report its volume information for the prior calendar year by the assessment date, a provisional fee, subject to adjustment when the information is reported, shall be assessed.

The amount calculated using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before August 1 for the current calendar year. The assessment shall be paid by licensees on or before September 1.

~~The annual report, due April 15 each year, of each licensee provides the basis for its assessment. In cases where a license has been granted between January 1 and April 15 of the year of the assessment, the licensee's initial annual assessment shall be \$0.~~

Fees prescribed and assessed pursuant to this schedule are apart from, and do not include, the following: (i) the annual license renewal fee of \$750 authorized by subsection A of § 6.2-1905 of the Code of Virginia and (ii) the reimbursement for expenses authorized by subsection C of § 6.2-1905 of the Code of Virginia.

10VAC5-120-60. Responding to requests from the Bureau of Financial Institutions; providing false, misleading, or deceptive information.

A. When the bureau requests a written response, books, records, documentation, or other information from a licensee or its authorized delegate in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws and regulations, the licensee or authorized delegate shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee or its authorized delegate to the bureau not later than 30 days from the date of such request. In determining the specified time

period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § 6.2-1910 of the Code of Virginia.

B. A licensee shall not provide any false, misleading, or deceptive information to the bureau.

C. If the bureau requests information from an applicant to complete a deficient application filed under §§ 6.2-1903 or 6.2-1914 of the Code of Virginia and the information is not received within 60 days of the request, the application shall be deemed abandoned unless a request for an extension of time is received and approved by the bureau prior to the expiration of the 60-day period.

10VAC5-120-70. Acquisitions; additional business requirements and restrictions; operating rules.

A. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under Chapter 19 shall pay a nonrefundable application fee of \$500.

B. A licensee shall not permit an authorized delegate to designate or appoint a subdelegate to sell money orders or engage in money transmission business.

~~C. The audited financial statements filed by a licensee pursuant to § 6.2-1905 D of the Code of Virginia shall cover the prior 12 month fiscal period and be prepared in accordance with generally accepted accounting principles.~~

~~D. Quarterly financial statements filed by a licensee pursuant to § 6.2-1917 B of the Code of Virginia shall be consolidated and prepared in accordance with generally accepted accounting principles.~~

~~E.~~ A licensee shall comply with Chapter 19, this chapter, and all other state and federal laws and regulations applicable to the conduct of its business. For purposes of Chapter 19 and this chapter, the acts and omissions of a licensee's authorized delegates shall be deemed acts and omissions of such licensee.

~~F.~~ D. In addition to the records specified in § 6.2-1916 B of the Code of Virginia, a licensee shall maintain in its principal place of business such other books, accounts, and records as the commissioner may reasonably require in order to determine whether such licensee is complying with the provisions of Chapter 19, this chapter, and other laws and regulations applicable to the conduct of its business.

~~G.~~ E. If a licensee, authorized delegate, or former licensee disposes of records containing a consumer's personal financial information or copies of a consumer's identification documents, such records and copies shall be shredded, incinerated, or otherwise disposed of in a secure manner. A licensee, authorized delegate, or former licensee may arrange for service from a business record destruction vendor.

~~H.~~ F. A licensee or former licensee shall provide the following information to the bureau within 10 days after such person's license is surrendered or revoked or the licensed business is otherwise closed: (i) the names, addresses, telephone numbers, fax numbers, and email addresses of a designated contact person and the person who consumers may contact regarding outstanding money orders or money transmission transactions; (ii) the location of the licensee's or former licensee's money order and money transmission records; and (iii) any additional information that the bureau may reasonably require. A licensee or former licensee shall maintain

current information with the bureau until the licensee or former licensee has no outstanding money orders and money transmission transactions.

~~I.~~ G. A person shall remain subject to the provisions of Chapter 19 and this chapter applicable to licensees in connection with all money orders sold and money or monetary value received for transmission while licensed under Chapter 19 notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered or revoked; or
2. The person ceases selling money orders or transmitting money or monetary value.

~~J.~~ H. A licensee shall not provide any information to a Virginia resident that is false, misleading, or deceptive.

~~K.~~ I. A licensee shall not engage in any activity that directly or indirectly results in an evasion of the provisions of Chapter 19 or this chapter.

~~L.~~ J. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-1906 of the Code of Virginia.